



USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC#  
DATE FILED: 4/10/08

April 9, 2008

The Honorable Andrew J. Peck  
Magistrate Judge  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, NY 10007

Re: 07-CV-3246 (BSJ)(AJP)  
Roberto Rivera, M.D. vs.  
Ruth Smith, M.D., Jess A. Bunshaft, Esq.,  
and St. Vincent's Catholic Medical Centers

MEMO ENDORSED - *js*

Dear Judge Peck:

I am the plaintiff in the above-named case who wishes to make an expedited discovery request for three (3) documents that I need and that are in the custody, control, and possession of the defendants, in particular, St Vincent's Catholic Medical Centers. I have already spoken with counsel for the defendants, Nancy V. Wright, Esq., who assures me that the defendants will oppose any request that I make for said documents and thus, I do not wish to wait the thirty (30) days after a formal Request for Production of Documents is made, to have the request refused.

The three documents I need are copies of patient charts from the clinic in which both Ms. Frances Dirks, F.N.P. and I worked, the Bellevue Men's Shelter Clinic. For two of the charts I know the names of the patients, their D.O.B. and shelter I.D. numbers so those should be easy to obtain. For the third patient, I do not know the name of the patient but the patient I am speaking of is well-remembered and referred to by Ms. Dirks, in both her letter of complaint against me (Complaint #10, "On December 2, 2005...") as well as her N.Y.P.D. police complaint against plaintiff dated 05/26/2006. Furthermore, this unnamed patient is also cited by Ms. Mimi Santiago, Nurse Coordinator, in her deposition, and myself, in the 2<sup>nd</sup> Amended Complaint, Paragraph #32 (the infamous "You're insidious..." confrontation).

The reasons I have need of copies of these three patient charts is that at present, the defendant, St. Vincent's Catholic Medical Centers, by virtue of its being current employer of all the witnesses and retaining full control over all the evidence, essentially controls the case. I do not have the access to charts that will help me prove my case, that I might have, were I still employed at St. Vincent's Hospital. Thus, I have no access to the evidence, nor am I able to obtain more than a few tepid statements of support from witnesses that I thought would prove friendly but who clearly know which side their toast is buttered on. That leaves me with little but my own affirmation as to what happened, and that is not going to be enough to withstand a summary judgement motion, let alone a trial. I need FACTS, facts that I feel will show that Ms. Dirks behavior was completely unprofessional, as well as utterly unacceptable during the three years we were supposed to be working together professionally and collegially, after our personal break up. Those facts are contained in written form in those three patient charts as well as many other patient charts whose names I do not recall. In the three cases whose patient charts I need access

to, I either stated my displeasure towards Ms. Dirks' behavior directly on the chart, or implied it clearly in narrative form in those records. That I chose not to raise an issue at that time, was due to my love for her and fear that she would just up and leave.

It is my intention to prove at trial that the two warring factions here, the plaintiff and Ms. Dirks, both share equal responsibility for the childish and immature behavior they displayed over the three last years of plaintiff's tenure at Bellevue, and that neither was victim nor villain, or, alternatively, that both were equally victim and villain, as shown by their behavior. I need facts to withstand summary judgement and ultimately prevail and those three charts, written years ago, contain those facts, not just general affirmations on my part that I was trying to be professional and she was not.

Sincerely yours,

*Roberto Rivera*

Roberto Rivera  
Plaintiff *pro se*  
82 La Salle Drive  
Yonkers, NY 10710  
914-482-0734

Dated: Yonkers, NY  
April 9, 2008

cc: Copy simultaneously served upon  
Nancy V. Wright, Esq.  
Wilson, Elser, Moskowitz, Edelman & Dicker LLP  
Of counsel, the defendants.

**MEMO ENDORSED** 4/10/08

*Defendant to produce the 2  
relevant charts as requested by  
the subpoena of Dr. Rivera / and  
the first chart of documents  
able to drop all pertinent  
and produce the charts in enclosed  
form as follows: any produce any  
statements of Dr. Rivera about the  
charts contained in the charts, without  
all other information, under the  
plaintiff's name, any medical information  
from the patient / except as contained in  
Dr. Rivera's comments about (Ms. Dirks).*

SO ORDERED:

**BY FAX**

Hon. Andrew Jay Peck  
United States Magistrate Judge

*copy to Dr. Rivera (fax)  
Ms. Wright (fax)  
Judge Jones*

# FAX TRANSMITTAL SHEET



**ANDREW J. PECK  
UNITED STATES MAGISTRATE JUDGE  
UNITED STATES DISTRICT COURT**

Southern District of New York  
United States Courthouse  
500 Pearl Street, Room 1370  
New York, N.Y. 10007-1312

Fax No.: (212) 805-7933  
Telephone No.: (212) 805-0036

**Dated:** April 10, 2008

**Total Number of Pages:** 3

TO	FAX NUMBER
Roberto Rivera, M.D.	914-961-5729
Nancy V. Wright, Esq.	212-490-3038

## **TRANSCRIPTION:**

### **MEMO ENDORSED 4/10/08**

Defendant is to produce the 2 patient charts on receipt of their identification by Dr. Rivera (and the third chart if defendant is able to identify the patient), and produce the charts in redacted form as follows: only produce any statements from Dr. Rivera about Ms. Dirks contained in the charts, redacting all other information including the patient's name, any medical information about the patient (except as contained in Dr. Rivera's complaints about Ms. Dirks).

**Copy to:** Judge Barbara S. Jones